IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 16540 of 2004

Between:

Syed Saber Hussaini, S/o Late Syed Ahmed Hussaini,
R/o H.No.20-5-164/A, Kasipura, Hyderabad

..... PETITIONER

AND

The Commissioner, Municipal Corporation of Hyderabad,
Office at Tank Bund, Hyderabad

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondent and his subordinates as illegal and unconstitutional in trying to demolish the petitioner's property House bearing No.20-5-164/B admeasuring 37.63 sq.yards equivalent to 31.46 sq.mts situated at Khasipura, Hyderabad, bounded on North by: Private passage of the petitioner, South By: Passage, East By: Part of House No.20-5-167, West By: Road, without issueing prior notice as per the H.M.C.Act

For the Petitioner:MR.NAZIR AHMED KHAN, Advocate

For the Respondent : MR.RAMA RAO GANTA, Standing Counsel

The Court at the stage of admission made the following :

ORDER:

Heard the learned counsel for the petitioner and learned Standing Counsel for the respondent-Corporation.

The petitioner claiming to be the absolute owner and possessor of house bearing No.20-5-164/B, admeasuring 37 sq.yards situate at Kazipura, Hyderabad having obtained the same under registered gift deed dt. 07-1-2004 filed the present writ petition stating that he made some construction over an extent of 37 sq.yards by way of renovation and officials of the respondent-Corporation without issuing any notice and without following due procedure, damaged the property by demolishing a part of the house.

Learned counsel for the petitioner submits that as per G.O.Ms.No.423 Municipal Administration dt. 31-7-1998 a person who is having house less than 100 sq.mtrs, permission is not required under Hyderabad Municipal Corporation Act, 1955 (for short "the Act") and in view of the same, construction made by the petitioner cannot be said to be illegal and the Municipal authorities cannot demolish the same without issuing any show cause notice.

Learned Standing Counsel for the respondent-Corporation, on instructions, submits that

petitioner has to submit plan and can proceed with the construction, which do not require any sanction. He further submits that respondent will follow due procedure as contemplated under the Act while removing the unauthorized constructions ie., projection towards the road etc., if any.

In view of the same, the respondent has to issue necessary show cause notice specifying the construction so made is contrary to the building laws and after giving sufficient opportunity to the petitioner to offer his explanation and pass appropriate orders in accordance with law and till passing the such final orders the officials of the respondent-Corporation shall not demolish the structures made by the petitioner. It is always open for the petitioner to submit necessary plan as per G.O.Ms.No.423 and can obtain sanction for the construction so made thereon. If any such application is filed seeking permission, the respondent shall consider the same and pass appropriate orders within three weeks from the date of receipt of such application.

The writ petition is accordingly disposed of.

12-10-2004

kmr

To

1. The Commissioner, Municipal Corporation of Hyderabad,
   Office at Tank Bund, Hyderabad

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